

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**LUIS ENCALADA, JUAN PABLO ENCALADA  
FLORES and LUIS CHIMBAY, individually and  
on behalf of others similarly situated,**

Plaintiffs,

— against —

**SENATOR CONSTRUCTION CORPORATION  
(D/B/A SENATOR CONSTRUCTION GROUP,  
INC.), SENATOR CONSTRUCTION GROUP  
INC. (D/B/A SENATOR CONSTRUCTION  
GROUP, INC.), HAROON CONTRACTING  
GROUP INC. (D/B/A SENATOR  
CONSTRUCTION GROUP, INC.), USMAN  
MUHAMMAD and ATIF RAFIQ (A.K.A. ATIQ  
REHMAN)**

Defendants.

Case No.: 1:18-CV-03727-ER

**DEFENDANTS' ANSWER &  
AFFIRMATIVE DEFENSES**

Defendants, Senator Construction Corporation (d/b/a Senator Construction Group, Inc.), Senator Construction Group, Inc. (d/b/a Senator Construction Group, Inc.), Haroon Contracting Group, Inc. (d/b/a Senator Construction Group, Inc.), Usman Muhammad, and Atif Rafiq (a/k/a Atiq Rehman), by and through their undersigned counsel, hereby Answer the Plaintiff's Complaint, as follows:

**ANSWER**

1. Defendants deny the allegations contained in Paragraph "1" of the Complaint.
2. Defendants deny the allegations contained in Paragraph "2", except admit that Defendant Usman Muhammad and Defendant Atiq Rehman have an ownership interest in

Defendant Senator Construction Group, Inc., which is located at 247 W. 35<sup>th</sup> Street, Rm. 401, New York, New York 10001.

3. Defendants deny the allegations contained in Paragraph “3”, except admit that Defendant Usman Muhammad and Defendant Atiq Rehman have an ownership interest in Defendant Corporations.

4. Defendants deny the allegations contained in Paragraph “4” of the Complaint.

5. Defendants deny the allegations contained in Paragraph “5” of the Complaint.

6. Defendants deny the allegations contained in Paragraph “6” of the Complaint.

7. Defendants deny the allegations contained in Paragraph “7” of the Complaint.

8. Defendants deny the allegations contained in Paragraph “8” of the Complaint.

9. Defendants deny the allegations contained in Paragraph “9” of the Complaint.

10. Defendants deny the allegations contained in Paragraph “10” of the Complaint.

11. Defendants deny the allegations contained in Paragraph “11” except admit Plaintiffs purport to proceed as stated therein but deny that the Plaintiffs are entitled to any relief outlined in Paragraph “11” of the Complaint.

12. Defendants deny the allegations contained in Paragraph “12” except admit Plaintiffs purport to proceed as stated therein but deny that the Plaintiffs are entitled to class certification outlined in Paragraph “12” of the Complaint.

13. Paragraph “13” states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained therein and refer all questions of law to the Court.

14. Paragraph “14” states a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that venue is proper in this district but

otherwise deny other allegations contained therein and refer all questions of law to the Court.

15. Defendants deny knowledge and information sufficient to form a belief as to allegations set forth in Paragraph “15” of the Complaint.

16. Defendants deny the allegations contained in Paragraph “16” of the Complaint.

17. Defendants deny knowledge and information sufficient to form a belief as to allegations set forth in Paragraph “17” of the Complaint.

18. Defendants deny the allegations contained in Paragraph “18” of the Complaint.

19. Defendants deny knowledge and information sufficient to form a belief as to allegations set forth in Paragraph “19” of the Complaint.

20. Defendants deny the allegations contained in Paragraph “20” of the Complaint.

21. Defendants deny the allegations contained in Paragraph “21”, except admit that Defendant Usman Muhammad and Defendant Atiq Rehman have an ownership interest in Defendant Senator Construction Group, Inc., which is located at 247 W. 35<sup>th</sup> Street, Rm. 401, New York, New York 10001.

22. Defendants admit the allegations contained in Paragraph “22” of the Complaint.

23. Defendants admit the allegations contained in Paragraph “23” of the Complaint.

24. Defendants admit the allegations contained in Paragraph “24” of the Complaint.

25. Defendants deny the allegations contained in Paragraph “25”, except admit that Defendant Usman Muhammad has an ownership interest in Defendant Corporations.

26. Defendants deny the allegations contained in Paragraph “26”, except admit that Defendant Atiq Rehman has an ownership interest in Defendant Corporations.

27. Defendants admit the allegations contained in Paragraph “27” of the Complaint.

28. Defendants deny the allegations contained in Paragraph “28”, except admit that

Defendant Usman Muhammad and Defendant Atiq Rehman have an ownership interest in Defendant Corporations.

29. Defendants deny the allegations contained in Paragraph “29” of the Complaint.
30. Defendants deny the allegations contained in Paragraph “30” of the Complaint.
31. Defendants deny the allegations contained in Paragraph “31” of the Complaint.
32. Defendants deny the allegations contained in Paragraph “32” of the Complaint.
33. Defendants deny the allegations contained in Paragraph “33” of the Complaint, including specifically, sub-paragraph a) through h).

34. Defendants deny the allegations contained in Paragraph “34” of the Complaint.
35. Defendants deny the allegations contained in Paragraph “35” of the Complaint.
36. Defendants deny the allegations contained in Paragraph “36” of the Complaint.
37. Defendants deny the allegations contained in Paragraph “37” of the Complaint.
38. Defendants deny the allegations contained in Paragraph “38” of the Complaint.
39. Defendants deny the allegations contained in Paragraph “39” of the Complaint.
40. Defendants deny the allegations contained in Paragraph “40” of the Complaint.
41. Defendants deny the allegations contained in Paragraph “41” of the Complaint.
42. Defendants deny the allegations contained in Paragraph “42” of the Complaint.
43. Defendants deny the allegations contained in Paragraph “43” of the Complaint.
44. Defendants deny the allegations contained in Paragraph “44” of the Complaint.
45. Defendants deny the allegations contained in Paragraph “45” of the Complaint.
46. Defendants deny the allegations contained in Paragraph “46” of the Complaint.
47. Defendants deny the allegations contained in Paragraph “47” of the Complaint.
48. Defendants deny the allegations contained in Paragraph “48” of the Complaint.

49. Defendants deny the allegations contained in Paragraph “49” of the Complaint.
50. Defendants deny the allegations contained in Paragraph “50” of the Complaint.
51. Defendants deny the allegations contained in Paragraph “51” of the Complaint.
52. Defendants deny the allegations contained in Paragraph “52” of the Complaint.
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62. Defendants deny the allegations contained in Paragraph “62” of the Complaint.
63. Defendants deny the allegations contained in Paragraph “63” of the Complaint.
64. Defendants deny the allegations contained in Paragraph “64” of the Complaint.
65. Defendants deny the allegations contained in Paragraph “65” of the Complaint.
66. Defendants deny the allegations contained in Paragraph “66” of the Complaint.
67. Defendants deny the allegations contained in Paragraph “67” of the Complaint.
68. Defendants deny the allegations contained in Paragraph “68” of the Complaint.
69. Defendants deny the allegations contained in Paragraph “69” of the Complaint.
70. Defendants deny the allegations contained in Paragraph “70” of the Complaint.
71. Defendants deny the allegations contained in Paragraph “71” of the Complaint.

72. Defendants deny the allegations contained in Paragraph “72” of the Complaint.
73. Defendants deny the allegations contained in Paragraph “73” of the Complaint.
74. Defendants deny the allegations contained in Paragraph “74” of the Complaint.
75. Defendants deny the allegations contained in Paragraph “75” of the Complaint.
76. Defendants deny the allegations contained in Paragraph “76” of the Complaint.
77. Defendants deny the allegations contained in Paragraph “77” of the Complaint.
78. Defendants deny the allegations contained in Paragraph “78” of the Complaint.
79. Defendants deny the allegations contained in Paragraph “79” of the Complaint.
80. Defendants deny the allegations contained in Paragraph “80” of the Complaint.
81. Defendants deny the allegations contained in Paragraph “81” of the Complaint.
82. Defendants deny the allegations contained in Paragraph “82” of the Complaint.
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89. Defendants deny the allegations contained in Paragraph “89” of the Complaint.
90. Defendants deny the allegations contained in Paragraph “90” of the Complaint.
91. Defendants deny the allegations contained in Paragraph “91” of the Complaint.
92. Defendants deny the allegations contained in Paragraph “92” of the Complaint.
93. Defendants deny the allegations contained in Paragraph “93” of the Complaint.
94. Defendants deny the allegations contained in Paragraph “94” of the Complaint.

95. Defendants deny the allegations contained in Paragraph “95” of the Complaint.

96. Defendants deny the allegations contained in Paragraph “96” of the Complaint.

97. Defendants deny the allegations contained in Paragraph “97” of the Complaint.

98. Defendants deny the allegations contained in Paragraph “98” of the Complaint.

99. Defendants deny the allegations contained in Paragraph “99” of the Complaint.

100. Defendants deny the allegations contained in Paragraph “100” of the Complaint.

101. Defendants deny the allegations contained in Paragraph “101” except admit Plaintiffs purport to proceed as stated therein but deny that the Plaintiffs, including other similarly situated persons, are entitled to any relief as a result of this action.

102. Defendants deny the allegations contained in Paragraph “102” of the Complaint.

103. Defendants deny the allegations contained in Paragraph “103” of the Complaint.

104. Defendants repeat and reallege their responses to Paragraph “1” through “104” as if fully set forth at herein.

105. Defendants deny the allegations contained in Paragraph “105” of the Complaint.

106. Defendants deny the allegations contained in Paragraph “106” of the Complaint.

107. Defendants deny the allegations contained in Paragraph “107” of the Complaint.

108. Defendants deny the allegations contained in Paragraph “108” of the Complaint.

109. Defendants deny the allegations contained in Paragraph “109” of the Complaint.

110. Defendants deny the allegations contained in Paragraph “110” of the Complaint.

111. Defendants repeat and reallege their responses to Paragraph “1” through “110” as if fully set forth at herein.

112. Defendants deny the allegations contained in Paragraph “112” of the Complaint.

113. Defendants deny the allegations contained in Paragraph “113” of the Complaint.

114. Defendants deny the allegations contained in Paragraph “114” of the Complaint.

115. Defendants repeat and reallege their responses to Paragraph “1” through “114” as if fully set forth at herein.

116. Defendants deny the allegations contained in Paragraph “116” of the Complaint.

117. Defendants deny the allegations contained in Paragraph “117” of the Complaint.

118. Defendants deny the allegations contained in Paragraph “118” of the Complaint.

119. Defendants deny the allegations contained in Paragraph “119” of the Complaint.

120. Defendants repeat and reallege their responses to Paragraph “1” through “119” as if fully set forth at herein.

121. Defendants deny the allegations contained in Paragraph “121” of the Complaint.

122. Defendants deny the allegations contained in Paragraph “122” of the Complaint.

123. Defendants deny the allegations contained in Paragraph “123” of the Complaint.

124. Defendants repeat and reallege their responses to Paragraph “1” through “123” as if fully set forth at herein.

125. Defendants deny the allegations contained in Paragraph “125” of the Complaint.

126. Defendants deny the allegations contained in Paragraph “126” of the Complaint.

127. Defendants repeat and reallege their responses to Paragraph “1” through “127” as if fully set forth at herein.

128. Defendants deny the allegations contained in Paragraph “128” of the Complaint.

129. Defendants deny the allegations contained in Paragraph “129” of the Complaint.

130. Defendants repeat and reallege their responses to Paragraph “1” through “129” as if fully set forth at herein.

131. Defendants deny the allegations contained in Paragraph “131” of the Complaint.



132. Defendants deny the allegations contained in Paragraph “132” of the Complaint.

133. Defendants repeat and reallege their responses to Paragraph “1” through “132” as if fully set forth at herein.

134. Defendants deny the allegations contained in Paragraph “134” of the Complaint.

135. Defendants deny the allegations contained in Paragraph “135” of the Complaint.

#### **AFFIRMATIVE DEFENSES**

136. Defendants reserve the right to assert and rely on additional affirmative defenses that may become available or apparent during discovery and/or trial. For their affirmative defenses to the Complaint, Defendant state and allege the following:

##### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

137. Plaintiffs’ Complaint fails to state a claim upon which relief can be granted.

##### **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

138. Plaintiffs cannot recover liquidated damages under the Fair Labor Standards Act (“FLSA”) or New York Labor Law (“NYLL”) because Defendants at all times acted in good faith and believed that their conduct was not in violation of the FLSA or NYLL or any other federal, state or local laws, rules, regulations or guidelines.

##### **AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

139. To the extent that the Plaintiffs could establish that the Defendants are liable under the FLSA and NYLL (and they cannot), recovery must be limited because the Defendants did not act willfully.

##### **AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

140. Any act or omission on the part of Defendants was in good faith and they had reasonable grounds for believing that such acts or omissions were not in violation of and were

in conformity with the FLSA, NYLL, written administrative regulations, orders, rulings, approvals or interpretations of the U.S. Department of Labor and New York Department of Labor, therefore, some or all of the claims in the Complaint are barred.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

141. The Complaint is barred, in whole or in part, by the doctrine of payment.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

142. Defendants are entitled to a set-off with respect to Plaintiffs for monies already paid, including for any hours that Plaintiffs were not working.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

143. Defendant Usman Muhammad is not a covered employer under the FLSA or NYLL.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

144. Defendant Atiq Rehman is not a covered employer under the FLSA or NYLL.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

145. Defendants maintained extensive and accurate records regarding Plaintiffs' hours worked and pay received and therefore Plaintiffs' allegations are not entitled to deference by the Court.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

146. Plaintiffs' claims may not be maintained as a class action under Federal Rules of Civil Procedure Rule 23.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

147. The questions of law or fact are not common to the potential class, and individual issues predominate over common issues.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

148. Plaintiffs' claims or defenses are not typical of the claims or defenses of the potential class.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

149. The interests of the potential class will not be fairly and adequately protected.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

150. Plaintiffs are not adequate representatives of the putative class members.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

151. The Complaint is barred, in whole or in part, because the named Plaintiffs cannot establish they are similarly situated for the purposes of 29 U.S.C. §216(b). Thus, collective certification is not appropriate.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

152. There does not exist a class of persons who are similarly situated to Plaintiffs with respect to the application of the FLSA.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

153. Defendants have fully compensated Plaintiffs and all other employees for all work performed.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

154. Upon information and belief, Plaintiffs failed to act reasonably to mitigate their alleged damages.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

155. Plaintiffs' claims are barred by applicable arbitration agreements and this action should therefore be dismissed, or alternatively stayed, in favor of arbitration.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

156. Without admitting that any violations of the FLSA or NYLL have occurred, to the extent any wages might have been inadvertently underpaid or unpaid, any amounts owed are *de minimus* and thus the Plaintiff may not recover therefor.

**AS FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

157. Defendants reserve the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information and investigation into the Plaintiffs' claims.

**WHEREFORE**, Defendants having fully answered the Complaint and respectfully request that this honorable Court:

- A. Cause the Complaint to be dismissed in its entirety with prejudice;
- B. Enter judgment against the Plaintiff;
- C. Order that the Plaintiff take nothing by virtue of the Complaint;
- D. Award attorneys' fees and costs to Defendants; and
- E. Award such other and further relief, whether in law or equity, as this Court deems just and proper.

Dated: November 30, 2018  
New York, NY

Respectfully Submitted,

**CRISCIONE RAVALA, LLP**

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